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December 7, 2011

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VIA CERTIFIED MAIL

MILLER NASH LLP

Steven F. Hill, Esq.
Miller Nash
500 East Broadway
Suite 400
Vancouver, WA 98666-0694

Re: Policyholder: Permanente Cement Company, et al.
Insurer: London & Edinburgh Ins. Co., Ltd.
Policies: LC 71361 (09/15/1962 – 09/15/1963)
LC 71671 (09/15/1963 – 09/15/1964)
LC 71671/A (09/15/1964 – 09/15/1965)
Claimant: Kaiser Gypsum Company, Inc.
Re: 104(e) request for information letter from the USEPA in
connection with the Lower Duwamish Waterway
Superfund Site

Dear Mr. Hill:

This letter is in response to Kaiser Gypsum Company, Inc.'s ("Kaiser Gypsum") request for coverage under the above-captioned policies ("Policies") in connection with the above-referenced 104(e) request for information ("Request for Information"), and also in response to your follow-up letter dated March 11, 2011, on behalf of both Kaiser Cement Corporation and Kaiser Gypsum. Please continue to forward all correspondence in this matter to my attention.

Kaiser Gypsum initially tendered the Request for Information to London & Edinburgh Insurance Co., Ltd. ("L&E"), in a December 17, 2010, letter directed to Cravens Dargan & Company and to L&E via the law firm of Wilson Elser Moskowitz Edelman & Dicker. The letter states that Kaiser Gypsum was served with the Request for Information, dated February 19, 2010, from the United States Environmental Protection Agency ("EPA") in connection with the Lower Duwamish Waterway Superfund Site ("Site").

In your follow-up letter dated March 11, 2011, you cited *Ash Grove Cement Co. v. Liberty Mutual Ins. Co.*, No. 09-239-KI (D. Or. Sept. 30, 2010) in further support of your request for coverage relating to the Request for Information. In the *Ash Grove* case, the federal district court in Portland, Oregon, held under Oregon law that a CERCLA 104(e) letter from the EPA constituted a "suit" under a CGL policy and triggered a duty to defend on the part of the insurer.

For the reasons set forth below, after careful review, we must advise you that no coverage is available to Kaiser Gypsum in connection with EPA's Request for Information under the Policies issued by L&E.

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I. THE L&E POLICIES

As noted above, we have located the following policies of insurance issued by L&E to Permanente Cement Company and, as of July 1, 1964, to Kaiser Cement & Gypsum Corporation:

LC 71361 (09/15/1962 – 09/15/1963)
LC 71671 (09/15/1963 – 09/15/1964)
LC 71671/A (09/15/1964 – 09/15/1965)

The insuring agreement in the Policies contains the following language:

Underwriters, in consideration of the premium as provided herein and subject to the terms and conditions hereinafter contained, do hereby agree to insure [Permanente Cement Company, et al.] hereinafter called the "Assured," as follows:

- I. **COVERAGE:** From and against all loss which the Assured may sustain or incur by reason of or in consequence of:
 - (A) Any and all liability imposed by law against the Assured for loss of or damage to or destruction of property of others (including but not limited to damage resulting from the loss of use of property damaged or destroyed and all other indirect and consequential damage for which legal liability exists in connection with such damage to or destruction of property of others) sustained or alleged to have been sustained during the currency of this Certificate and arising from any cause whatsoever out of the operations, activities, work and/or business of the Assured.
 - (B) Damage to or destruction of property of others assumed by the Assured under contracts, leases or agreements, but this Certificate shall not be held to cover any liability assumed by the Assured in any contract for damage to or destruction of property in the care, custody or control of the Assured, or rented, leased or used by the Assured, unless such liability would have been covered hereunder even in the absence of such contract, lease or agreement.
 - (C) Underwriters also agree:
 - (1) To investigate and/or defend in the name and on behalf of Assured all claims or suits for such injury or damage for which the Assured is, or is alleged to be liable.
 - (2) To pay in addition to the limits of liability expressed in Paragraph 2 of this Form all expenses incurred by Underwriters for investigation,

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negotiation and defense of any such claims or proceedings; all premiums on attachment and/ or appeal bonds required in any such proceedings; all costs taxed against the Assured in any such proceedings; and all interest on Underwriters' share of any judgment accruing before or after entry of such judgment and up to the date of payment by Underwriters of their share of any such judgment.

The insuring agreement of the Policies provides that the Underwriters agree to investigate and/or defend "all claims or suits for such injury or damage for which the Assured is, or is alleged to be liable." The Request for Information does not constitute a "suit." Nor does it constitute a "claim ... for such injury or damage." Further, the Request for Information does not give rise to a duty to defend because it does not allege liability, or even potential liability, for environmental contamination, or for any other third-party property damage.

Regarding the *Ash Grove* decision, the vast majority of courts that have addressed the issue have determined that a 104(e) request, by itself, does not trigger an insurer's duty to defend. The *Ash Grove* case was decided under Oregon law, which would not apply to Kaiser Gypsum's claim here, since the Site is located in Washington, and since the Policies were issued through a San Francisco broker to the insured in California. Furthermore, *Ash Grove* was decided based upon the definition of "suit" mandated by the Oregon Environmental Cleanup Assistance Act, and there is no similar statutory or regulatory mandate in Washington or California.

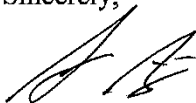
II. CONCLUSION

This communication is not intended to be, and should not be construed as an exhaustive listing of all policy terms and conditions that may apply to this matter. Hartford hereby reserves all its rights, positions and defenses in the matter. Neither this communication, nor any prior or subsequent communications, should be construed as a waiver of any rights, positions or defenses held by Hartford.

If there is any information or documentation that you would like us to consider, please immediately bring the same to my attention. Also, should you have any questions regarding the foregoing and/or should you wish to discuss this matter in general, please do not hesitate to contact me.

If you believe this claim has been wrongfully denied, you may have the matter reviewed by the California Department of Insurance. They may be contacted at 300 South Spring Street, Los Angeles, CA 90012. The in-state consumer hotline number is (800) 927-4357, or out of state, you may call (213) 897-8921.

Sincerely,



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